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March 31, 2003

[Via U.S. Mail and E-mail]

Rebecca Kane
Office of Enforcement & Compliance Assurance (MC 2222A)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

RE: Enforcement & Compliance History Online Website (67 FR 70079, Nov. 20, 2002).

Dear Ms. Rebecca Kane:

ChevronTexaco appreciates this opportunity to provide comments on EPA's pilot website which shows the past two years of environmental compliance history for 800,000 facilities (www.epa.gov/echo). We acknowledge and support the public's right to know about a facility's environmental compliance performance. We support EPA's Enforcement & Compliance History Online (ECHO) website as a step in that direction. However, we have some concerns about the level of errors in the current pilot website, and we offer below suggestions on how EPA's reporting of violations can be made more accurate.

ChevronTexaco is the fourth largest energy company in terms of global oil and natural gas production. We are an integrated company involved in all aspects of the energy business: exploration, production, manufacturing, transportation, marketing, and research. We have many facilities in the U.S. that are covered by ECHO. We expend significant resources to maintain compliance at our facilities via extensive environmental management systems. We take our compliance obligations seriously. Therefore, we have a great interest in ensuring the facility compliance histories reflected in ECHO are accurate and put in proper context.

ChevronTexaco is a member the American Petroleum Institute (API), the American Chemistry Council (ACC), and the National Petrochemical & Refiners Association (NPRA). We support the detailed comments being submitted by those trade groups. In our ChevronTexaco comments below we simply highlight a few main points that are very important to us. In addition, we offer some constructive ideas below on how facilities can help EPA improve ECHO so that users of the website find it accurate, clear and helpful.

1. EPA Needs to Address the High Level of Error in ECHO.

API's comment letter contains a long list of example errors that companies, including ChevronTexaco, have found in ECHO. For example, one of our co-generation plants in

California had an incorrect non-compliance item listed in ECHO even though the referenced two local air district's notices of violation (NOVs) were issued and rescinded in the same month in 2001. Another example is our production operation in Wyoming where the state agency issued an NOV for a short compressor stack based on a photo, but after we provided height documentation the agency withdrew the NOV in March 2002. But yet ECHO still listed that event as a violation.

These are just two examples of the many errors we found in ECHO. EPA's online correction process, even if improved, will not avoid the damage to our company's reputation that EPA does by directly listing such false violations on its public website without any pre-checks with the facility. Correcting errors after the initial public posting is too late. The company's reputation will have already been damaged. A fundamental change is needed in how data is placed into ECHO or else such false violations will continue to be listed. Then neighbors, activists, and news reporters will eventually stop using EPA's website because such experiences of false "alarms" will cause them to conclude the web site is unreliable. We recommend a specific solution idea below in item #3 (i.e., facility preview).

2. Distinguish Alleged Violations from Actual Violations.

A fundamental principle of law is that an accused person or company is considered innocent until proven guilty. But ECHO equates mere allegations of non-compliance with actual non-compliance. ECHO's equating allegations with proven violations unfairly damages a company's reputation. We suggest that EPA use different abbreviations in the data boxes in ECHO (in lieu of "INVIOL") to distinguish three types of violations:

- A. ALLEGED, BUT NOT RESOLVED,
- B. CONFIRMED ADMINISTRATIVELY or ADJUDICATED, and
- C. RESOLVED BY FACILITY AGREEMENT.

API's comment letter provides more detail on this suggestion.

3. Let Facilities Review Data Before It is Posted.

One major disadvantage of EPA's current error correction process is that the process begins only after EPA has publicly posted the information on the Internet. Incorrect information remains on the website until the error correction process is complete. This allows false violations to damage a company's reputation.

One simple way to address this problem is to allow facilities the opportunity to review data before it is posted. Such a pre-posting review process could work as follows. EPA would allow facilities the option (if they want to) to sign up for pre-posting review. Allowing the preview signup to be optional would efficiently focus the review with those facilities that truly care about their reputation and want to take the time to screen for potential errors. During sign-up, facilities would provide EPA with appropriate contact information. EPA would then contact facilities with any new ECHO data and allow them to review it for a pre-determined time period, for example 30 days. If a facility informs EPA of an error, EPA would not post the data until the error is resolved. If a facility does not inform EPA of any errors within the review

timeframe, then EPA would post the data. This system would be relatively simple to implement because it would consist of straightforward communication between EPA and the facility. The preview would not necessarily involve any changes to the ECHO website, because the process would occur prior to posting data on the website. EPA states that it wants facilities to get involved in looking for errors, and this preview option would create a real incentive for facilities to do just that.

This preview idea is similar to what EPA already does in its Toxic Release Inventory (TRI) reporting (i.e., echo-back step where EPA sends facilities a preview summary of its reported emissions). It is interesting to note that EPA's TRI report seems to have much fewer errors than ECHO even though TRI likely contains more data. We feel the main reason for EPA's TRI report being of higher quality is the facility preview step. Other commenters have also recommended a preview feature be added to ECHO (see Texas industry group's Jan. 10, 2003 letter, attached).

EPA has a duty under the Data Quality Act to ensure that the data it publicly disseminates is correct. EPA's data quality guideline describes steps EPA should take to ensure pre-dissemination reviews are thorough. We cannot envision a thorough pre-dissemination review of a compliance record that would not seek the input from the facility involved.

4. A Useful Compliance Metric Needs an Indication of Total Obligations.

Large complex facilities such as refineries often have thousands of compliance requirements. Therefore, comparing say two new violations in a quarter at a refinery to two violations at a small facility (with only a few requirements) is not a fair comparison of compliance performance unless an estimate of each facility's total obligations is provided. EPA should provide such a meaningful context by providing estimates of the number of compliance obligations that a facility faces. We understand that it may not be possible for EPA to provide precise estimates of a facility's compliance obligations. However, a rough indication (even an order of magnitude) of the number of obligations that a given size or type of facility faces would provide the ECHO user with a better perspective on a facility's overall compliance performance. API and ACC previously provided EPA with a study (Tischler, Jan. 2002) estimating the number of compliance obligations faced by refineries and chemical plants of various sizes. For example, that report shows that a typical large refinery has 670,000 environmental obligations.

5. Data on Population Density near Each Facility Should be Dropped.

ECHO provides in each facility report a detailed section entitled "Demographics Profile of Surrounding Area." This section includes the population density (and demographic makeup) for various distances around the facility. We are concerned that potential terrorists may use ECHO's search feature to find targets of certain facility types in densely populated areas, such as gasoline terminals in urban settings. Although we know such population data is already available on other websites, we are concerned about EPA proliferating it and providing an easy-to-use search feature in ECHO.

Also, the demographic data will likely trigger neighbors to draw conclusions about how the

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number of violations may have some environmental impact on them. We notice that EPA includes a disclaimer statement that the population data has no relationship to the compliance information, but we feel the public will still be misled into making risk conclusions. Many of the violations in ECHO are just paperwork violations and have no environmental impact. The Data Quality Act mandates that EPA take steps to ensure information that it disseminates to the public not be misleading.

For these reasons of national security and faulty risk communication, we recommend that EPA drop the demographic section from ECHO.

We hope that our comments above help EPA develop a better process that meets EPA's goal of providing the public with a meaningful, easy way to judge the compliance performance of a facility. If you have any questions about our comments above, please contact Judy Blanchard in my office at (202) 408-5831 or Clay Freeberg in our San Ramon office at (925) 842-3451.

Sincerely,

[o/s by H. Dickey for P.T. Cavanaugh]

Philip T. Cavanaugh

cf: CRF

Enclosed: BakerBotts' Jan. 10, 2003 letter.